IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 1583 (SS) 2004.

Tejpal Singh Rawat S/o Balwant Singh Rawat,
Resident of village & Post-Lodia Via-Nal Gaon,
District- Chamoli. .....Petitioner.

Versus

1. Union of India through Secretary,
   Ministry of Defence, New Delhi,
2. Commandant, Garhwal Rifles, Lansdown,
   District-Pauri Garhwal,
3. Officer-in-charge, Records,
   Garhwal Rifles Lansdown,
   District Pauri Garhwal. .....Respondents.

Sri B.P.S. Mer, learned counsel for the petitioner,
Sri Vikas Pandey, learned Standing Counsel Union of India/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.P.S. Mer, learned counsel for the petitioner and Sri Vikas Pandey, learned Standing Counsel for Union of India/respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

a. Issue a writ, order or direction in the nature of certiorari to quash the order dated 23.08.2004 passed by the respondent no.3 contained in annexure no.7,

b. Issue a writ, order or direction in the nature of mandamus directing the respondents to grant the disability pension to the petitioner with consequential benefits forthwith,

c. Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper under facts and circumstances of the case,

d. Award the cost of petition to the petitioner.

The stand taken by the petitioner is that he was medically examined by the Recruiting Medical Board of Garhwal Rifles on 24.09.1999, thereafter he was issued appointment letter on 19.11.1999 to undergo training in the Garhwal Rifles, Lansdown, District Pauri Garhwal. Vide order dated 29.01.2001 the petitioner was declared unfit by the Medical Examination Board and was informed vide order dated 09.07.2001 that all the documents of the petitioner have been forwarded to the Controller of Defence Account, Pension, Allahabad for grant of disability pension, however he has not been granted disability pension. Aggrieved with the denial of disability pension, the petitioner preferred the present writ petition.

The Medial Examination Board in its opinion has held that the disease, from which the petitioner is suffering and thereby causing him disable to perform Army duty, exists before entering into Army services. The Board has assessed the disability of the petitioner between 15 to 19 percent. It is admitted by learned counsel for both the parties that as per Rules, the recruitee is entitled to disability pension, in case the disability assessed by the Medical Board is 20 percent or more than 20 percent.

Admittedly, in the case of the petitioner, his disability has been assessed between 15 to 19 percent. In view of the aforesaid position and in view of the facts that this Court has limited

powers under Article 226 of Constitution of India, nothing can be done so far the case of the petitioner is concerned.

The petition is devoid of merits, as such, the same is liable to be dismissed.

Accordingly, the writ petition is dismissed in limine. No order as to costs.

(M.M. Ghildiyal, J.)

December 15, 2006:
NCM: